

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DAVID PRESTON BROWN,
Plaintiff,

No. C 13-5630 NJV (PR)

ORDER OF SERVICE

v.

STEVE FREITAS, et al.,
Defendants.

Plaintiff filed a pro se civil rights complaint under 42 U.S.C. § 1983. (Doc. 1.) The Court found that Plaintiff's original complaint stated a cognizable Eighth Amendment claim against Dr. Fodokl and an ADA claim against Sonoma County, but dismissed the complaint with leave to amend regarding the remaining claims and defendants. (Doc. 6.) The time to amend has passed and Plaintiff has not filed an amended complaint or otherwise communicated with the court. The claims against Dr. Fodokl and Sonoma County are sufficient to proceed for the reasons discussed in the prior order. The remaining claims and defendants will be dismissed from this action.

CONCLUSION

1. The clerk shall issue a summons and Magistrate Judge jurisdiction consent form and the United States Marshal shall serve, without prepayment of fees, the summons, Magistrate Judge jurisdiction consent form, copies of the complaint (Docket No. 2) with attachments and copies of this order on Defendant Dr. Niloofar Fodokl of Sonoma County Jail and Defendant Sonoma County.

2. The remaining claims and Defendants are dismissed from this case.

3. In order to expedite the resolution of this case, the court orders as follows:

1 a. No later than sixty days from the date of service, Defendants shall file a
2 motion for summary judgment or other dispositive motion. The motion shall be supported
3 by adequate factual documentation and shall conform in all respects to Federal Rule of
4 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
5 from the events at issue. If Defendants are of the opinion that this case cannot be resolved
6 by summary judgment, they shall so inform the court prior to the date the summary
7 judgment motion is due. All papers filed with the court shall be promptly served on Plaintiff.

8 b. At the time the dispositive motion is served, Defendants shall also serve,
9 on a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154
10 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.
11 4 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and
12 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss
13 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

14 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
15 court and served on Defendants no later than thirty days from the date the motion was
16 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
17 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
18 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).
19 If Defendants file a motion for summary judgment claiming that Plaintiff failed to exhaust his
20 available administrative remedies as required by 42 U.S.C. § 1997e(a), Plaintiff should take
21 note of the attached page headed "NOTICE -- WARNING (EXHAUSTION)," which is
22 provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).

23 d. If Defendants wish to file a reply brief, they shall do so no later than fifteen
24 days after the opposition is served on them.

25 e. The motion shall be deemed submitted as of the date the reply brief is
26 due. No hearing will be held on the motion unless the Court so orders at a later date.

27 4. All communications by Plaintiff with the Court must be served on Defendants, or
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1 Defendants' counsel once counsel has been designated, by mailing a true copy of the
2 document to Defendants or Defendants' counsel.

3 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
4 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
5 parties may conduct discovery.

6 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
7 informed of any change of address by filing a separate paper with the clerk headed "Notice
8 of Change of Address." He also must comply with the Court's orders in a timely fashion.
9 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
10 Federal Rule of Civil Procedure 41(b).

11 **IT IS SO ORDERED.**

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13 Dated: June 5, 2014.



NANDOR J. VADAS
United States Magistrate Judge

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United States District Court
For the Northern District of California

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

NOTICE -- WARNING (EXHAUSTION)

If defendants file a motion for summary judgment for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case. You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions. If defendants file a motion for summary judgment for failure to exhaust and it is granted, your case will be dismissed and there will be no trial.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DAVID PRESTON BROWN,

No. 1:13-CV-5630 NJV (PR)

Plaintiff,

v.

CERTIFICATE OF SERVICE

STEVE FREITAS, et al.,

Defendants.

I, the undersigned, hereby certify that on June 5, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

David Preston Brown
2066 Mendocino Avenue
#54
Santa Rosa, CA 95401

/s/ Linn Van Meter

Linn Van Meter
Administrative Law Clerk to
the Honorable Nandor J. Vadas